



May 2, 2019

FREEDOM OF INFORMATION ACT REQUEST

Via <https://foiaonline.gov/foiaonline/action/public/request>

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Act Request – Documents Related to the State of
Washington’s Water Quality Standards

Dear FOIA Officer:

On behalf of Earthjustice and Puget Soundkeeper Alliance, this letter requests information pursuant to the Freedom of Information Act (“FOIA”) 5 U.S.C. § 552, and the pertinent Environmental Protection Agency (“EPA” or “Agency”) regulations, 40 C.F.R § 2.100 *et seq.* The relevant time period for this request is from November 1, 2016, to the time the response to this request is provided.

FOIA REQUEST

A. Definitions

For purposes of this request, the term “records” is used to mean anything denoted by that word or its singular form in the text of FOIA. In particular, the term includes, but is not limited to, documents (handwritten, typed, electronic or otherwise produced, reproduced, or stored), letters, e-mails, facsimiles, memoranda, correspondence, notes, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained.

Additionally, for purposes of this request, the following definitions apply:

- 1) “Petition for Reconsideration” is defined as the *Petition for Reconsideration of EPA’s Partial Disapproval of Washington’s Human Health Water Quality Criteria and Implementation Tools submitted by the State of Washington on August 1, 2016, and Repeal of the Final Rule Revision of Certain Federal Water*

Quality Standards Applicable to Washington, 81 Fed. Reg. 85,417 (Nov. 28, 2016), which was submitted to EPA by Northwest Pulp & Paper Association, American Forest and Paper Association, Association of Washington Business, Greater Spokane Incorporated, Treated Wood Council, Western Wood Preservers Institute, Utility Water Act Group, and Washington Farm Bureau on February 21, 2017 (available at <https://www.regulations.gov/document?D=EPA-HQ-OW-2015-0174-0434>);

- 2) “EPA” is defined to include any EPA office, officer, agent, or employee that may have responsive records in its possession, custody, or control, including, but not limited to, the Office of the Administrator, EPA Headquarters offices, the Office of Water, and EPA Region 10. It is further defined to include the following current and former EPA staff: Scott Pruitt, Andrew Wheeler, Ryan Jackson, Samantha Dravis, Doug Ericksen, Don Benton, David Fotouhi, Matt Leopold, Lauren Maher, Justin Schwab, David Ross, Erica Fleisig, Sara Hisel-McCoy, Dennis Lee Forsgren, Jr., Anna Wildeman, Benita Best-Wong, Chris Hladick, Michelle Pirzadeh, Dan Opalski, Angela Chung, and any other EPA Headquarters or EPA Region 10 staff who may be custodians of responsive documents;
- 3) “Washington Department of Ecology” is defined as any employees or representatives of the agency, including but not limited to Director Maia Bellon;
- 4) “Governor of the State of Washington” is defined as Governor Jay Inslee and all of the Governor’s office staff and/or advisors;
- 5) “The White House” is defined as President Trump and any of his staff and/or advisors;
- 6) “The United States Department of Interior” is defined as any employees or representatives of the agency.

B. Documents Requested:

- 1) Any and all correspondence (and references thereto) by and between EPA and the parties listed below regarding (1) the Petition for Reconsideration, (2) the State of Washington’s Human Health Water Quality Criteria and Implementation Tools, and/or (3) EPA’s Final Rule on Washington Water Quality Standards, *Revision of Certain Federal Water Quality Standards Applicable to Washington*, 81 Fed. Reg. 85,417 (Nov. 28, 2016):
 - a. Northwest Pulp & Paper Association, American Forest and Paper Association, Association of Washington Business, Greater Spokane Incorporated, Treated Wood Council, Western Wood Preservers Institute, Utility Water Act Group, or Washington Farm Bureau;
 - b. The Governor of the State of Washington;
 - c. The Washington State Department of Ecology;
 - d. The White House;

- e. The United States Department of Interior;
 - f. Any member of the United States Congress and/or congressional staff;
 - g. Any and all of EPA's intra-agency correspondence and communications (and references thereto) regarding the State of Washington's Human Health Water Quality Criteria and Implementation Tools and/or EPA's Final Rule on Washington Water Quality Standards.
- 2) The document referred to as "Notice-1' phase" in the March 20, 2019 Memorandum from Erica Fleisig regarding Posting EPA-HQ-OW-2015-0174 to Regulations.gov for Public Access (Memorandum was posted to the EPA-HQ-OW-2015-0174 docket on April 8, 2019).
- 3) Any and all of EPA's correspondence and communications (and references thereto) regarding the "Notice-1' phase" and the March 20, 2019 Memorandum from Erica Fleisig regarding Posting EPA-HQ-OW-2015-0174 to Regulations.gov for Public Access.

C. Disclosure of Documents

We ask that you disclose this information as it becomes available to you without waiting until all of the communications and records have been assembled for the time period requested. We request electronic copies of the records whenever possible.

While we are requesting a fee waiver, if it will speed disclosure and photocopies or electronic copies of the above-requested documents can be provided for \$50 or less, please simply copy the responsive documents and provide them to the address shown below with an invoice for the amount due and my office will reimburse the costs. If, in your best estimate, copies of the documents responsive to this request cannot be provided for \$50 or less, please call me to make other arrangements.

We remind you that FOIA requires that you respond within 20 working days of your receipt of this request, *see* 5 U.S.C. § 552(a)(6)(A)(i), and that that response must "at least indicate within the relevant time period the scope of the documents [you] will produce and the exemptions [, if any, you] will claim with respect to any withheld documents." *Citizens for Responsibility & Ethics in Washington v. F.E.C.*, 711 F.3d 180, 182-83 (D.C. Cir. 2013).

D. Claims of Exemption from Disclosure

If you regard any documents as exempt from required disclosure under the Act, please exercise your discretion to disclose them nevertheless. *See* Memorandum from the Attorney General to Heads of Executive Departments and Agencies (Mar. 19, 2009) ("[A]n agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption."), *available at* <http://www.justice.gov/ag/foia-memo-march2009.pdf>.

Should you determine that any records may be withheld under FOIA's narrow exemptions, please identify each allegedly exempt record in writing, provide a brief description

of that record, and explain the agency's justification for withholding it. If a document contains both exempt and non-exempt information, please provide those portions of the document that are not exempted from disclosure. Finally, if a document does not exist, please indicate that in your written response.

E. Request for a Fee Waiver

We respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l)(1).

Puget Soundkeeper Alliance is a small non-profit organization that employs just 10 staff. Its mission is to protect and preserve the waters of Puget Sound. In furtherance of its mission, Puget Soundkeeper Alliance monitors Puget Sound's water quality, helps set strong policies and regulations that protect waterways and human health, enforces environmental regulations, engages citizens and businesses in waterway cleanups and recovery projects, educates and involves the public in local water pollution issues, and partners with local and regional groups to advance solutions that protect Puget Sound.

Puget Soundkeeper Alliance has no commercial interest in the requested records. Its sole interest in obtaining the records is to analyze the information, incorporate it into educational materials and advocacy to EPA and other governmental agencies, and disseminate the information along with Puget Soundkeeper Alliance's analysis to the public. Puget Soundkeeper Alliance is a news media requester in that it actively gathers information on matters affecting the Puget Sound, turns raw information into reports and expert analysis, and disseminates the information and analysis to the public. Accordingly, only duplication costs could be charged for this request.

We ask for a full fee waiver because "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of these operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(iii). The public interest test is not intended to be a difficult one to satisfy, as the Ninth Circuit has held a requester meets this burden in situations in which "[t]hey identified why they wanted the [requested information], what they intended to do with it, to whom they planned on distributing it. . ." *Friends of the Coast Fork v. BLM*, 110 F.3d 53, 55 (9th Cir. 1997). This request concerns a matter of tremendous public importance. EPA's *Revision of Certain Federal Water Quality Standards Applicable to Washington* finalized a rule that protects Washington's waters, people, and wildlife from toxins. EPA has now signaled that it intends to reverse its recent, science-based decision and implement a much less protective standard. The public has a right to know the basis for actions related to Washington's water quality standards and the extent of communications EPA has with interested industry groups. Daylighting this information will contribute greatly to public understanding of the operations of EPA on this public policy matter.

Moreover, Puget Soundkeeper Alliance has both the expertise to analyze the requested records and the ability to disseminate the information and its analysis to the public. Puget Soundkeeper Alliance's staff includes two attorneys, public policy experts, and staff with expertise in stormwater pollution, Clean Water Act enforcement, and clean water policy. Puget

Soundkeeper Alliance regularly shares information on its web properties, which garner significant monthly visits. It disseminates information to approximately 8,000 online activists distributed throughout Washington State via email action alerts and newsletters. Puget Soundkeeper Alliance also shares information and analysis with thousands of followers on social media platforms, particularly Facebook, as well as Instagram, Twitter, and LinkedIn.

Additionally, Puget Soundkeeper Alliance has been heavily involved in obtaining the current, more protective water quality standards that Washington currently has in place. The organization's involvement has included technical comments and participation in the administrative processes related to the rule, as well as education of its members and the public. Puget Soundkeeper Alliance is eminently qualified and able to analyze the requested records and disseminate the information on this important issue to the public. Accordingly, it is entitled to a fee waiver.

Please contact the undersigned should you have any questions regarding this request. Thank you in advance for your assistance.

Sincerely,



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And on behalf of Puget Soundkeeper Alliance

cc: Chris Wilke, Puget Soundkeeper Alliance
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